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had a lien or other interest in the property. *Austin v. Barrows*, 41 Conn. 287; *Farmer v. Shannon*, 8 N. Y. St. Rep. 131; *Lamb v. Stone*, 11 Pick. (Mass.) 527. But in the former, it is enough that the creditor changed his position because of and relying on the misrepresentation. *Alexander v. Church*, 53 Conn. 561; *N. Y. Land Co. v. Chapman*, 118 N. Y. 288; *Fottler v. Moseley*, 185 Mass. 563. Failure to distinguish these two kinds of cases has led in the present case to the error which two neighboring states have avoided. See *Alexander v. Church, supra*; *N. Y. Land Co. v. Chapman, supra*. The difficulty of assessing damages is not a sufficient reason for refusing recovery in an otherwise good cause of action. It is for the jury to determine the damages, however difficult this may be. *Hunt Co. v. Boston Elevated Ry. Co.* 199 Mass. 220.

EQUITY — JURISDICTION — BILL BY ONE ON BEHALF OF MANY FOR DISTRIBUTION OF LIMITED FUND. — The plaintiff brought a bill on behalf of himself and all the other victims of embezzlement by X to recover against the surety on a bond given by X. The total amount alleged to be embezzled exceeded the penalty on the bond. *Held*, that the bill will lie. *Guffanti v. National Surety Co.*, 196 N. Y. 452.

The court rightly bases its decision on the jurisdiction of equity to administer a limited fund to which there are claims more than sufficient to exhaust the fund; or which will be dissipated if creditors having conflicting claims are restricted to their legal remedies. *Dimmick v. Register*, 92 Ala. 458; *National Park Bank v. Goddard*, 62 Hun (N. Y.) 31. It is upon this same principle that equity appoints receivers. *KERR, RECEIVERS*, Ch. I. The bill lies at the suit either of the claimants, or of the holder of the fund. *Dauler v. Hartley*, 178 Pa. St. 23; *American Surety Co. v. Lawrenceville Cement Co.*, 96 Fed. 25. It may also be brought, as in the principal case, by one claimant on behalf of himself and all others interested. *Crowell v. Cape Cod Ship Canal Co.*, 164 Mass. 235. In such a case, however, it must appear that the plaintiff is truly representative, and that the court can sufficiently protect those not made parties. *Smith v. Williams*, 116 Mass. 510. See 18 HARV. L. REV. 57. Where there are many non-resident claimants, courts sometimes refuse the bill. See *Smith v. Williams, supra*. The New York court, however, rightly decides that in the present case the existence of non-resident claimants, who may be excluded by an exhaustion of the fund through suits at law by those first learning of the embezzlement, is an argument for rather than against equitable interference.

EQUITY — JURISDICTION — UNFAIR COMPETITION. — A brought a bill in equity alleging that A, B, and C were competing expressmen; that D published a "Pathfinder" purporting to contain a full list of expressmen in that vicinity; that B and C by false statements and threats of injury to D's business induced him to omit any reference to A's business, thus damaging A. A therefore sought to have D enjoined from publishing the "Pathfinder" without A's name, and B and C from attempting to procure such publication. *Held*, that the bill is not demarable. *Davis v. New England Railway Publishing Co.*, 89 N. E. 565 (Mass.).

The omission of the plaintiff's name from what purports to be a complete list of expressmen is equivalent to an assertion that he is not in the business. The Massachusetts court paid scant attention to the bearing on this case of the rule that equity will not enjoin a libel. The weight of American authority supports that rule, although it seems wrong on principle. See 16 HARV. L. REV. 67. But such a statement as this is not technically a libel, because it is not defamatory. Yet if consciously false, intended to damage and actually causing damage, it is actionable. *Ratcliffe v. Evans*, [1892] 2 Q. B. 524. Equity jurisdiction as to B and C may be based on the analogy of labor boycotts. The combination of B and C by threats to influence D's conduct, and through him the conduct of A's prospective customers toward A resembles a secondary rather than a primary boycott, and even without falsehood would probably be at least a *prima facie*

wrong. To what extent competition justifies, is a very debatable question of public policy. See 20 HARV. L. REV. 356 *et seq.* Clearly competition is no justification for falsehood.

EVIDENCE — ADMISSIONS — DECLARATIONS BY PREDECESSORS IN TITLE. — In an action of ejectment, involving a controversy over a boundary line not clearly described in the deeds, the defendant sought to introduce evidence of admissions made by the plaintiff's predecessors in title, to the effect that the boundary was as claimed by the defendant. *Held*, that parol admissions are competent only when possession, not ownership, is in issue. *Gilmartin v. Buchanan*, 119 N. Y. Supp. 489 (Sup. Ct., App. Div.). See NOTES, p. 397.

EXECUTORS AND ADMINISTRATORS — RIGHTS, POWERS, AND DUTIES — DEBTOR AS PERSONAL REPRESENTATIVE OF DECEDENT. — The testator named as executors two debtors of his own. *Held*, that their obligations are to be deemed assets of the estate. *Wachsmuth v. Penn Mutual Life Ins. Co.*, 89 N. E. 787 (Ill.). See NOTES, p. 391.

EXECUTORS AND ADMINISTRATORS — RIGHTS, POWERS, AND DUTIES — RIGHT TO RECOVER EXCESS PAYMENT FROM CREDITOR. — An administratrix, through negligence or mistake, paid the defendant a debt against the estate with estate funds. Later, the estate was declared insolvent and a *pro rata* payment of creditors was decreed. *Held*, that the administratrix can recover the payment in excess of the defendant's *pro rata* share. *Woodruff v. Clafin Co.*, 133 N. Y. App. Div. 874.

At common law the administrator's right of preference allowed him to pay one creditor in full, regardless of the others. *Lyttleton v. Cross*, 3 B. & C. 317, 322. As such a payment was properly made it could not later be recovered. A legacy, however, when paid before the estate was known to be insolvent could be recovered. Under the modern rule that creditors should be paid *pro rata*, the excess paid to one creditor is more analogous to the payment of a legacy than to the old preferential payment. *Walker v. Hill*, 17 Mass. 380. Accordingly, the administrator has been allowed to recover on the ground of a contract to refund implied by law, or of a mistake of fact. *Wolf v. Baird*, 123 Ill. 585. A broader reason for recovery is that the preferred creditor has been unjustly enriched at the expense of other creditors. *Morris v. Porter*, 87 Me. 510. *Contra*, *Beardsley v. Marsteller*, 120 Ind. 319. Some courts deny recovery to a negligent administrator. *Lawson's Adm'rs v. Hansborough*, 10 B. Mon. (Ky.) 147. Others allow it even though the payment was tortious, reasoning that equity should encourage the administrator to right his wrong. *Clark v. Hougham*, 2 B. & C. 149. Such is the prevailing doctrine in the case of trustees. *Wetmore v. Porter*, 92 N. Y. 76. Were the defendant's real rights prejudiced, an exception might properly be made. *Brooking v. Farmers' Bank*, 83 Ky. 431. But where the defendant deserves only his proper *pro rata* share, the administrator should recover.

EXTRADITION — INTERSTATE EXTRADITION UNDER THE UNITED STATES CONSTITUTION — ABSOLUTENESS OF DUTY TO SURRENDER FUGITIVE FROM JUSTICE. — The Governor of Mississippi issued in due form to the Governor of Missouri a requisition for the arrest of the petitioner, a negro fugitive from justice. After being duly arrested, the petitioner sued out a writ of *habeas corpus*, on the ground that the race feeling in Mississippi would deprive him of a fair trial and of equal protection of the laws. *Held*, that he is not entitled to the writ, for the Governor of Missouri has a right to assume that the prisoner will be given a legal trial in Mississippi. *Marbles v. Creecy*, 30 Sup. Ct. 33.

The federal constitution provides for interstate extradition for all crimes. U. S. CONST. Art. 4, § 2, ¶ 2. And by statute it is made the duty of the executive